IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

SVV TECHNOLOGY INNOVATIONS, INC.	*	April 6, 2023
VS.	*	CIVIL ACTION NOS.
ASUSTEK COMPUTER INC.	*	6:22-CV-311, 312, 313
MICRO-STAR INTERNATIONAL CO. LTD.	*	6:22-CV-511, 512
ACER INC.	*	6:22-CV-640, 641

BEFORE THE HONORABLE ALAN D ALBRIGHT
MARKMAN HEARING (via Zoom)

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(Hearing begins.)

09:33 THE CLERK: A civil action in Cases 6:22-CV-311, 312 and 313, SVV Technology Innovations, Incorporated versus ASUSTeK Computers Incorporated; and 6:22-CV-511, 512, 513, SVV Technology Innovations, Incorporated versus Micro-Star International Co. Ltd.; and Cases 6:22-CV-639, 640 and 641, SVV Technology Innovations, Incorporated versus Acer Incorporated. Cases called for a Markman hearing.

09:33 THE COURT: Announcements from counsel, please.

09:33 MR. KATZ: Good morning, Your Honor. Robert Katz for plaintiff SVV Technology Innovations, Inc.

09:33 MR. FINDLAY: Good morning, Your Honor. Eric Findlay on behalf of Acer. And also with me is Mr. Bijal Vakil and William Wray. Mr. Wray will be speaking.

09:33 And then, Your Honor, I'm also here on behalf of Micro-Star International -- Acer. I think I got that confused.

09:34 Micro-Star International, Your Honor. And that's Bijal Vakil and William Wray.

09:34 And also for Acer, along with me for Acer is Mr. Jerry Chen.

I apologize, Your Honor. Good morning.

THE COURT: Good morning. No apologies needed.

MR. SLOSS: Good morning, Your Honor. Robert Sloss from the Procopio firm representing ASUSTeK Computer Inc. With me is Jack Shaw and Boyuan Wang from our office.

THE COURT: Have you appeared in my court before?

MR. SLOSS: I have, Your Honor.

THE COURT: I didn't -- what case was it on?

MR. SLOSS: I'm not memorable. That's all right.

THE COURT: No, no. I just --

MR. SLOSS: It was a prior ASUSTeK case.

THE COURT: Okay. Well, welcome back.

And anyone who wears a bow tie like your partner, I think is a good thing. I used to have a lot of them until my sons decided they liked bow ties. And I don't have any left at home. But it's quite a good look.

MR. GARDNER: Your Honor, Allen Gardner's also here for ASUS. And I'm ready to proceed.

THE COURT: Welcome.

09:35 Any other counsel?

09:35 MR. KATZ: No one from plaintiff, Your Honor.

09:35 THE COURT: Okay. Let me pull up -- give me one second. First claim term is "light input surface."

09:35 I will hear from the defendant.

09:35 MR. WRAY: Good morning, Your Honor. Thank you.

09:35 My name is William Wray, and as Mr. Findlay noted, I am representing Micro-Star International Co.

09:35 Thank you for hearing argument on this term. The Court's initial construction was plain and ordinary meaning here. And the defendants' proposed construction was: A surface that receives -- the faces and receives light from the light source.

09:35 We thought, Your Honor, that it was worth having some oral argument on this term for a couple of reasons.

09:35 The first is related to a notice of supplemental authority that we filed yesterday evening. I apologize that the Court did not have more time to review this.

09:35 What this notes and supplemental

authority demonstrated was that some of the information that was relied upon by plaintiff in connection with its argument on this term was actually not supposed to be in the patent which they referred.

Specifically, in the plaintiff's surreply, they included a figure called Figure No. 27 and they argued that this figure demonstrates that the surface that actually faces and receives the light source in that particular figure was not pointing at what they called the light input surface.

Instead of coming from the top -- the light input surface was on the top layer in this particular embodiment -- the light came from the side, from one of the narrow ends of the sheet.

We dug into the file history of the '191 and discovered that that was a proposed amendment to the specification that the USPTO actually rejected and directed the applicant to cancel and remove.

That was the only example that plaintiff was able to find that showed light entering the optical cover at anywhere other than the light input surface. And because that was something that was raised for the first time in the surreply brief and relates to something in the file history that the Court had not previously been provided, we wanted to bring that to

the Court's attention.

In addition to that fact, Your Honor, harkening back to our opening brief, the reason we asked for the Court to construe this term is because we believe that a jury is likely to be confused by the phrase "light input surface."

THE COURT: I don't -- I just sat through a patent trial. I don't believe when someone says a jury's likely to be confused in this situation. They're likely be confused for five days.

And so I hear that -- I've heard that a thousand times now at Markmans, and I can tell you that it doesn't work on me. I mean, the jury -- that's not a good reason to do it. So I don't mean to be impolite, but, you know, it's -- go ahead, please.

MR. WRAY: Understood, Your Honor.

I suppose I'll explain why the term is just inherently ambiguous, which is that the term "input" is a term that can both mean something that receives something that's put into a system, and also something that actually is responsible for putting into a system.

And in this case whenever the patentee used the term "light input surface," the patentee was exclusively referring to a surface that is receiving

09:38 the light. And he was never using it to refer to a
09:38 surface that's responsible for putting light into a
09:38 system.
09:38 So input device in the electronic sense
09:38 is something that is responsible for inputting
09:38 something. A printer input tray is something that's
09:38 responsible for putting paper into the printer.
09:38 There's all these examples where the term "input" is
09:38 used to mean put something in.
09:38 And that's not at all what the surface
09:38 does here. Instead, we're talking about a broad
09:38 material, kind of like a sheet or a horizontal cover.
09:39 It's got two surfaces. One of them always is receiving
09:39 light and one of them always is -- it's the output of
09:39 the light.
09:39 And it's helpful in order to resolve that
09:39 ambiguity to say that the light input surface is the
09:39 one that receives light. That comes right from the
09:39 specification and it resolves all the ambiguities in
09:39 the term itself.
09:39 THE COURT: I get that argument. Let me
09:39 hear from plaintiff.
09:39 I guess the first issue would be, is
09:39 counsel's concern -- should he be concerned that you
09:39 are going to say that it can be both a light input

surface, meaning the surface receives the light that is input, and also it can be a light input service which inputs the light?

And so let me hear your position on that real quick.

MR. KATZ: Your Honor, if I may, may I address the issue with the printing error in the '191 patent that counsel brought to light?

Because basically --

THE COURT: Sure.

MR. KATZ: Thank you, Your Honor.

So the defendants made an argument and they filed a notice of supplemental authority last night that suggests that the '191 patent may have had some passages in there that should not have been in there because of some sort of a printing error.

There should not be any allegation that the applicant did anything wrong. Basically the applicant, in connection with an RCE, proposed an amendment that attempted to add three paragraphs and one figure.

And the examiner came back with a notice of noncompliance. In response, the applicant went and took those out and simply submitted a different amendment without those three paragraphs and figure.

When the patent got printed, for some reason it included the first -- the first amendment which -- to which the Patent Office had issued the notice of noncompliance instead of the second.

So it appeared that some things got into the patent that were not supposed to be there. That --

THE COURT: Some things got in the patent because of a printing error that should not be there.

MR. KATZ: Yes. It's no fault of the applicant basically --

THE COURT: Got it.

MR. KATZ: Okay. So the information, nevertheless, is part of the intrinsic record. And I'd like to just show the Court how this information is part of the intrinsic record.

And if I could just share my screen really quickly. This is the '191 patent that we actually referred to in the brief. And counsel for defendant just mentioned that we used some information in our surreply.

In the '191 it actually references this parent application. It's the '867 application that's 12/764867 which later issued into the '007 patent.

So that means that the '007 patent, that specification is intrinsic evidence. And the Court can

09:42 rely on that for claim construction. It is part of the
09:42 intrinsic record.
09:42 So I'm just going to pull up the '007
09:42 patent so that the Court can see what the '007 patent
09:42 is.
09:42 THE COURT: And I'm listening. I just
09:42 have to grab a tablet. But keep going, I'm listening.
09:42 MR. KATZ: Okay. And right here on the
09:42 face of the '007 patent is the figure that the
09:42 defendants complained about. And it's right here on
09:42 the first page.
09:42 And, again, this is the '867 application
09:42 and this is the '007 patent. And right at the -- right
09:43 at the bottom of the first page it actually shows what
09:43 we used in our surreply. And it shows a light source
09:43 here coming in from the side.
09:43 So and I'll just show the Court where
09:43 this comes from. It comes from Figure 26 of the
09:43 patent. And it's actually in the description for
09:43 Figure 26. It actually shows that it's a cross-section
09:43 and it refers to this being at least one embodiment of
09:43 the present invention.
09:43 So, again, this is part of the intrinsic
09:43 record. The Court can and should rely on it for
09:43 purposes of claim construction. So as far as I know,

09:43 the defendants haven't pointed to anything that we used
09:43 that is not part of the intrinsic record.
09:44 So putting that issue aside, I'd like to
09:44 refer back to the remainder of the argument. The
09:44 second issue is the light input surface.
09:44 And the first major issue here is that
09:44 this term need not be construed. The term was not
09:44 redefined by the patentee. The term is not technical.
09:44 There's no suggestion that the patentee redefined it or
09:44 that it's got some sort of a specialized meaning. It's
09:44 just "light input surface."
09:44 And we agree with the Court, construal of
09:44 this term would not be helpful to the jury.
09:44 So there's a couple of issues with the
09:44 defendants' proposal, even beyond those -- the fact
09:44 that it should not be construed.
09:44 The first is that the defendants'
09:45 proposed construction imposes this new requirement --
09:45 structural requirement that the light input surface has
09:45 to face the light source.
09:45 And we just saw from the intrinsic record
09:45 that one of the embodiments at least does not need to
09:45 face the light source.
09:45 Second of all -- so defendants' proposal
09:45 would exclude a disclosed embodiment, which would be

improper.

Second of all, defendants' proposal adds this other structural limitation. It refers to "the light source." So it creates this antecedent for a single -- a single light source, which is another structural limitation.

So there's two aspects of this. As I mentioned, it imposes a structural limitation, and then it also creates this ambiguity as to what does it mean to face the light source? Does it need to be orthogonal or perpendicular to the light source? So it creates ambiguity as well.

Again, on the second bullet, it would contradict the intrinsic disclosures. And again, we do have -- within the intrinsic record, we have embodiments that show light coming in from the side.

So for a number of reasons, the term need not be construed and the defendants' proposal here adds structural limitations that should not be -- should not be added.

So we agree with the Court's plain and ordinary meaning on this.

THE COURT: Anything else from the defendant?

MR. WRAY: Yes, Your Honor. If I could

09:47 respond briefly to Mr. Katz' point concerning the '007 patent.

Even if the '007 patent is in the extrinsic record -- sorry -- intrinsic record, it's not helpful to the Court in this case because the Court is construing the term "light input surface." The '007 patent has that figure, but it never uses the term "light input surface."

So there is no embodiment in the intrinsic record in which the light is coming into anything but the light input surface.

While that figure does exist in the '007 patent, the entire patent does not have any reference to a light input surface nor does it have a reference to a light output surface.

Further, there was some arguments in the surreply brief that related to Figures 18 and 19. I don't know if the Court is interested in hearing defendants' perspective on those, but SVV suggested that defendants misconstrued their arguments.

SVV did rely on Figure 18 in its initial response brief, and we pointed out that in that case surface 10 was functioning as the light output surface.

And as to Figure 19, that does not show that the surface that's been designated as a light

input surface is receiving light and the other one is just outputting light.

But if the Court doesn't have any further questions, we will rest on our briefs.

THE COURT: Okay. I'll be back in a second.

(Pause in proceedings.)

THE COURT: The Court is going to maintain its construction of plain and ordinary meaning.

The next claim term up is "light harvesting device." I will hear again from defendant.

MR. CHEN: Thank you, Your Honor. This is Jerry Chen from TechKnowledge Law Group. I'll be arguing this term on behalf of defendants.

We've taken the Court's construction to heart. And so for the most part we would rest on our briefing papers. However, there are a few issues from the surreply that we would like to address.

For "light harvesting device" the issue that we'd like to address is plaintiff's argument in their surreply that the light harvesting device includes luminescent concentrators.

And I'll share my screen.

THE COURT: I'm trying to understand what

you're doing here. Is your concern that if I have -- if I go with plain and ordinary meaning that the plaintiff is going to include something in the plain and ordinary meaning that they revealed in the surreply and you want to take it up now? Is that what we're doing?

MR. CHEN: Well, I think what we want to address is some of the arguments that plaintiff made in the surreply. And that to the extent that those were factors that were important to the Court's consideration, we wanted to --

THE COURT: Okay. I got it.

MR. CHEN: -- address those.

THE COURT: Okay. Thank you.

MR. CHEN: Thank you.

So, yes, the issue that we want to address is plaintiff's argument that light harvesting devices include luminescent concentrators. And specifically it's plaintiff's argument that the '191 patent specification describes luminescent concentrators in the context of light harvesting or enhancing light harvesting efficiency.

And plaintiff reaches this conclusion by effectively taking two paragraphs in the description of the background art of the '191 patent and merging it

into a single paragraph. And you see here in their brief what appears to be one paragraph is actually portions of two separate paragraphs.

And plaintiff does this in order to create the impression that these two paragraphs are addressing the same subject matter. And they are not.

If we look at the '191 patent itself, the description of the background art, we can see that there are actually three paragraphs here.

The first one discusses light harvesting devices and it basically describes the light harvesting devices and issues associated with light trapping in light harvesting devices. At the end of the paragraph it states that it's the object of the invention to provide an improved optical structure that can be used in conjunction with light harvesting devices to effectively improve light trapping.

Now, the next paragraph the patent discusses a different category of devices. It says: Luminescent concentrators (audio distortion) addressed the problems associated with light trapping in light harvesting devices by providing this optical cover structure that would improve light trapping within light harvesting devices.

And so you can see from the language that

09:53 the last paragraph here is referring back to the
09:53 original first paragraph where it's talking about the
09:53 object of the invention, which is to address
09:53 specifically issues of light trapping in light
harvesting devices.

09:53 But more so than just the language
09:53 itself, we know that the last paragraph is referring to
09:53 the first paragraph because when we look at the
09:53 original application of the '191 patent, we see that
09:53 there was only two paragraphs.

09:54 Here's the original application. We can
09:54 see that there is only two paragraphs in the
09:54 description of the background art. The first one is
09:54 describing light harvesting devices, again talking
09:54 about the issues with light trapping and stating that
09:54 it's the object of the invention to address these
09:54 issues specifically in light harvesting devices.

09:54 And then the second final paragraph,
09:54 again, stating -- restating the fact that the invention
09:54 intends to solve these problems and is addressing the
09:54 specific issues associated with light harvesting.

09:54 The second paragraph, this paragraph
09:54 discussing luminescent concentrators, was actually the
09:54 paragraph -- one of the paragraphs that were added
09:54 during prosecution incorrectly and it had been removed

prior to issuance.

So, you know, regardless, if we look at just the language itself, we can see that the patent never actually discusses or conflates light harvesting devices with luminescent concentrators. They are different devices and they're discussed separately.

As we know, light harvesting devices absorb and convert light energy. Luminescent concentrators absorb and reradiate light. They're different processes, they're different devices and they're not the same.

So if Your Honor doesn't have any questions, I'll move on to the next issue.

THE COURT: I don't have any questions.

MR. CHEN: So the next issue we want to address is also related to luminescent concentrators. And this is related to plaintiff's argument in their reply -- surreply brief that absorbing and re-radiating constitutes light conversion.

And specifically its (audio disruption) claim misunderstood the physics of luminescence. And that somehow it -- defendants correctly understood the physics of luminescence, we would understand that that's actually a light conversion process.

And this mischaracterizes defendants'

09:56 position. We understand what luminescence is.
09:56 Luminescence is when light energy is absorbed by a
09:56 material, oftentimes a phosphor, and that excites a
09:56 electron to an elevated energy state. And when that
09:56 electron -- excited electron relaxes, a photon is
09:56 emitted.
09:56 What we disagree with is plaintiff's
09:56 characterization of that process and characterization
09:56 of that process as light conversion.
09:56 However, we think the important point
09:56 here is really not how the parties decide to
09:56 characterize the physics after the fact. What's
09:56 important is how the patent characterizes the process.
09:57 And the patent is very clear. The patent
09:57 describes luminescence here as absorbing and
09:57 re-radiating. It does not describe it as light
09:57 conversion. Whenever the patents or any of these
09:57 family of patents use "conversion" or "convert," it is
09:57 specifically describing a process where light energy is
09:57 changed to a different non-light form. And that does
09:57 not include luminescence or re-radiation.
09:57 So with that, those are the issues.
09:57 Again, if Your Honor has any questions, we'd be happy
09:57 to answer them.
09:57 THE COURT: Okay. I'll be back in a

09:57 second.

09:57 (Pause in proceedings.)

09:59 THE COURT: Okay. Thank you for that break.

09:59 I don't think I need to hear a response. I'm going to maintain the Court's construction of plain and ordinary meaning.

09:59 The next claim term I have up is "light converting"/"convert...light"/"converting light."

09:59 I'll hear again from defendant.

09:59 MR. CHEN: Your Honor, those two issues -- the issues for light harvesting and light converting are effectively the same. And so those are the same issues.

09:59 THE COURT: That you didn't just argue. I'm happy to hear it, but if they're the same, it'd be the same result.

09:59 So I'll maintain that construction.

09:59 Next up is "aperture." And so give me one second. Okay. I'll hear first from the plaintiff. Give me one second.

10:00 Okay. I'll hear from the plaintiff on this one, please.

10:00 MR. KATZ: Thank you, Your Honor.

10:00 Regarding aperture, the patentee extended

10:00 the use of this term in two ways. First of all, the --
10:00 let me just open up one of these slides.
10:00 So there are two issues here. In general
10:00 usage sometime aperture will refer to a hole or an
10:00 opening. The patentee also used it to refer to a
10:00 dimension of a hole or opening.
10:00 In addition to that, in some places the
10:01 patentee used it to refer to a surface.
10:01 And let me simply provide some examples.
10:01 But the intent here is to not confuse the jury but to
10:01 explain to the jury that there are instances where the
10:01 patentee has extended the use of the "aperture" term.
10:01 So in the first --
10:01 THE COURT: And why is that precluded by
10:01 plain and ordinary meaning of aperture to one skilled
10:01 in the art based on what he reads in the patent here?
10:01 MR. KATZ: I'm sorry. I had to turn my
10:01 volume up, Your Honor.
10:01 Could you repeat that, please?
10:01 THE COURT: I hope so. What I tried to
10:01 ask is: I understand your argument that aperture here
10:01 means maybe more than what I as a layman would think
10:01 aperture -- it means.
10:01 But why would the plain and ordinary
10:02 meaning of aperture not include what you're arguing it

would include to a person skilled in the art based on what's in the specification? And why do I need to construe it to say what you want me to construe it as opposed to it being what one skilled in the art would say?

And this is much longer than the first, but if your point is that you're worried that you'll have an expert saying that aperture can include what you want it to include and there's infringement and they're saying -- defendant's going to say, aperture doesn't include in its plain and ordinary meaning what you want it to include, and therefore, there's no infringement and the fight is over aperture, it'd be good to take that up now.

So hopefully my question was clear. If it wasn't, I can try it again.

MR. KATZ: Thank you, Your Honor.

So a person of ordinary skill in the art who reviews the specification would understand, I believe, that aperture can refer to both a dimension and also refer to a surface.

The intent here to construe the term was to not confuse the jury. And let me just provide one example.

On Claim 17 of the '321 patent, there's

10:03 an element that says: Wherein a cumulative
10:03 light-receiving aperture is less than an area of the
10:03 first and second broad-area surfaces.
10:03 So there's this comparison between this
10:03 thing and the area of this other thing. So effectively
10:03 this claim element is trying to actually compare the
10:04 area, the cumulative area of this first thing with this
10:04 area of this first and second broad-area surface, this
10:04 other thing.
10:04 So in order to set up an apples-to-apples
10:04 comparison, if aperture were defined to include the
10:04 dimension, then you would have a comparison between an
10:04 area or a dimension with an area.
10:04 So the intent here was just to not -- to
10:04 reduce the possibility of any jury confusion by
10:04 explaining that aperture could refer to not just the
10:04 thing but the dimension of the thing, because some of
10:04 these claim elements set up this comparison.
10:04 Does that -- at least that hopefully
10:04 explains the reason behind the first part of the
10:04 proposal.
10:04 THE COURT: What I'm not following is --
10:05 and maybe -- let me try this. Let me flip over to the
10:05 defendant and maybe it'll help me come back to the
10:05 plaintiff.

10:05 So is the defendant -- does the defendant intend to argue that the plain and ordinary meaning would not include the dimensions that the -- does the defendant intend to argue that the plain and ordinary meaning would not include what the plaintiff believes it includes based on the specification?

Because I want to make sure, if we have a claim construction -- a fight over what plain and ordinary meaning is, we probably ought to think about that now. So I'll hear from defendant and then I'll hear from plaintiff.

MR. WRAY: Thank you, Your Honor.

At least as to what's being displayed in this slide, there's no dispute. And, in fact, our proposed alternative construction expressly included the sense of an aperture as a dimension. In fact, we kind of brought plaintiff around on this one.

10:06 Our proposed construction said we think it should be plain and ordinary meaning. But if the Court needs to construe, part of that construction should be the area of the aperture.

10:06 And then plaintiff eventually agreed with us, changed its proposed construction from diameter to area, and then now to dimension. So we're -- there's no dispute about that aspect of the term.

10:06 THE COURT: Okay. Then let me bounce back to the plaintiff. I'm not following why the plaintiff isn't happy with plain and ordinary meaning.

10:06 MR. KATZ: Based on what the defendant just represented with respect to adding the dimension thereof, it does not sound like we have a dispute, if the defendant is not going to quibble on whether or not it could include a dimension.

10:06 With the Court's indulgence, should I move on to the second aspect? Which is that it could refer also to a surface?

10:07 THE COURT: Yes.

10:07 MR. KATZ: Okay. So the second -- the issue is that in some of the claim terms the aperture can actually also refer to a surface. And I think this is one example where the specification shows the term "aperture" referring to a surface. And I'm pointing on Slide 21 to the '318 patent at 9:25 to 27 with reference to Figure 3.

10:07 And it talks about this focusing array which is Element 6 and the light coming into it. And it's referring to one side representing the entrance aperture perpendicular to the incident beam. So it's referring to this surface being the entrance aperture.

10:07 So in this way the aperture is not just a

10:08 hole or an opening, but it can refer to the surface where the light comes through.

So I want to ensure that the jury's not confused about this. And that the defendants would not object to this, in that a "surface" could also be -- could also be an aperture.

THE COURT: Well, let's hear from them.

MR. WRAY: Thank you, Your Honor.

I actually have some initial confusion here, because I'm at the '318 patent on my screen and Figure 3 is not what is up on the slide.

So I have some initial confusion about which patent and which figure plaintiff is intending to refer here.

MR. KATZ: I hope we didn't -- we don't have a cut-and-paste error in here. Let me pull up a different slide, just because it might be faster than to compare that back with the patent itself.

There were other citations where the aperture is referring to a surface. And one of them is in the '999 patent, and it refers to lenses 10 each having a square aperture.

So this is another example where the aperture is actually pointing to a surface. And hopefully this is a correct rendition on Slide 23 of

10:09 Figure 5 pointing to these solid areas labeled as 10
10:09 and -- in which the patent is actually referring to
10:09 these lenses as being apertures when they are, in fact,
10:09 solid surfaces.
10:09 So this is just another example are the
10:10 term "aperture" is used to refer to a surface.
10:10 MR. WRAY: May I respond on that, Your
10:10 Honor?
10:10 THE COURT: Of course.
10:10 MR. WRAY: Thank you.
10:10 As to the diagram that they're showing
10:10 here, I respectfully disagree with Mr. Katz because the
10:10 description of the Figure 5 patent says that the lenses
10:10 are 10. I believe No. 6 is the entire focusing array.
10:10 So it's not pointing to those individual
10:10 lenses and saying that those are apertures. It's
10:10 pointing to those individual lenses and saying they're
10:10 lenses.
10:10 It says that the lenses have apertures,
10:10 which is consistent with the plain and ordinary meaning
10:10 because there's openings that are allowing the light to
10:10 go through those lenses.
10:10 So with respect, I don't think that this
10:10 diagram shows a lens being an aperture. It shows a
10:10 lens having an aperture.

10:10 MR. KATZ: In this -- if I may, Your Honor.

10:11 In this case, still the Element 10, these are -- these are surfaces whether the surfaces are lenses or something else. They are still surfaces. They're not holes.

10:11 So the point is whether or not defendant could argue in the future whether this -- these apertures have to be holes or could they also be surfaces. In which case, the surfaces could be lenses but it still comes down to whether an aperture could be a lens or a surface and not just a hole.

10:11 MR. WRAY: And if I could respond, Your Honor, this is showing that these lenses do not have a square surface. There's nothing about the surface itself that's square. It's in some sort of three-dimensional shape that I don't -- maybe it's an obloid sphere, I can't describe the surface.

10:11 But what's known is that the opening for them is square. The two-dimensional opening for each of these lenses is square. But the lenses themselves are certainly not square. Actually they're aspherical, most likely.

10:12 So we wouldn't agree that an aperture is a surface. We would agree in this particular case

these aspheric lenses have a two-dimensional square opening that allows the light to go through.

THE COURT: So here's what we're going to do. And I can't, I don't believe, fix this here at the Markman stage by -- I can't really do things prophylactically which is I feel like what the plaintiff is asking me to do.

So though it's not -- I'll say on the record -- not the best way to do it, I think "aperture" in this situation does have a plain and ordinary meaning.

But when the plaintiff gives their infringement report or the defendant gives a noninfringement report, this may be just something I have to take up at summary judgment stage. And if you all will put a pin in this to remind me that if the fight that you all have is over whether or not, for example in this case, a surface can be included or not, then you'll take the position you take. And I'll resolve it at summary judgment stage. And it'll either eliminate an infringement argument or eliminate a noninfringement argument, one or the other.

I don't think that it's -- I can deal with it here at this stage just fighting over what the word "aperture" means.

10:13 The final issue is whether or not "providing first semiconductor quantum dots..." going on from there, is indefinite or not.

10:13 The Court's preliminary construction is that it is, so I'll hear first from the plaintiff.

10:13 MR. KATZ: Thank you, Your Honor. I'm just going to put up a slide on this as well.

10:14 So we have one element of Claim 20, and it refers to: First semiconductor quantum dots having a first band gap; providing -- and then it says again: First semiconductor quantum dots having a second band gap, which is different from the first bandgap.

10:14 So there are two points here that shows that this is strictly a clerical error and that there's no credible or reasonable dispute that the highlighted first, in other words, the second of the first semiconductor quantum dots should refer to the second instead of the first.

10:14 The first is, there is the definite article "the" referring to "the first and second semiconductor quantum dots" in the limitation. Well, looking at the antecedent there's a "first" but then there are two firsts.

10:15 So it's clear from that that one of those needs to be a "second." Because, again, there's a

10:15 definite article "the" that should refer back to an
10:15 antecedent first and second, yet there's only two
10:15 antecedent firsts. So that would suggest to a person
10:15 of skill in the art that one of these needs to be a
10:15 second.
10:15 The other -- the other fact that shows
10:15 that this is a clerical error is that it refers to
10:15 "first semiconductor quantum dots having a first band
10:15 gap" and then literally "the first semiconductor
10:15 quantum dots having a second band gap which is
10:15 different from the first..."
10:15 So that, again, suggests that the first
10:15 bandgap and the second bandgap have to be different.
10:15 So these two need to refer to different semiconductor
10:16 quantum dots.
10:16 So we believe that the error is clear on
10:16 its face.
10:16 The defendants also argued the law on
10:16 this a little bit in their briefing and they tried to
10:16 conflate the redrafting of claims with judicial
10:16 correction, and we feel that we've met the exception
10:16 here. It's an obvious administrative or typographical
10:16 error. We're not trying to wholesale redraft claims.
10:16 The defendants also argue that, you know,
10:16 we could have gotten a certificate of correction.

10:16 There's a time --

10:16 THE COURT: Well, believe it or not, I actually was one of the lawyers in that case. And that's not the way I -- the way I remember that case is different than the situation we have here.

10:17 MR. KATZ: In summary, the elements that are required for judicial correction, I think, are clearly met here.

10:17 The error, as we've shown, is evident on the face of the patent just from the claim language itself. There are two aspects of the claim language that show that there's a clerical error and how to fix the clerical error.

10:17 The specification does not show anything to the contrary, and our proposed correction is not subject to reasonable debate.

10:17 So we feel that we've met the criteria here in Lucent. And we feel that the Court can and should fix that one word, "first," to a "second."

10:17 THE COURT: Okay. I'll be a back in just a second.

10:17 (Pause in proceedings.)

10:19 THE COURT: If we can go back on the record.

10:19 The Court is going to maintain its

10:19 original claim construction that the claim term is indefinite.

And I think that's all the claim terms that we have, but if I'm missing something we need to take up, someone can holler and let me know.

Anything else?

MR. KATZ: Nothing else for plaintiff, Your Honor.

THE COURT: Defendants?

MR. WRAY: Nothing else from defendants, Your Honor, other than to note what we already noted to the clerks, which is that, although we only elected to use hearing time for these terms today, defendants do not agree with the Court's other preliminary constructions against defendant.

THE COURT: You bet. I understand that.

MR. SHAW: And, Your Honor, on behalf of ASUSTeK, we'd like to thank you again for taking the time to listen to our respective positions this morning.

Thank you so much. Good to see you again.

THE COURT: I have the best job in the world. Sometimes I forgot to -- I forget to say it, but occasionally I'm told I'm in the press with people

10:20 wondering why I would want patent cases. And I always give the same response when asked, which is: I think it's the best lawyers in the world, and so why wouldn't I want to have cases that have great counsel?

So it's easy for me to understand, but I guess the question lingers.

So I hope you guys have a wonderful Easter. And I hope we see at least some of you in person in the near future.

Take care.

(Hearing adjourned.)

UNITED STATES DISTRICT COURT)
WESTERN DISTRICT OF TEXAS)

I, Kristie M. Davis, Official Court Reporter for the United States District Court, Western District of Texas, do certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

I certify that the transcript fees and format comply with those prescribed by the Court and Judicial Conference of the United States.

Certified to by me this 28th day of April 2023.

/s/ Kristie M. Davis

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10:20